



# ICLG

## The International Comparative Legal Guide to: **Shipping Law 2019**

**7th Edition**

A practical cross-border insight into shipping law

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Shipping Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of shipping laws and regulations.

It is divided into two main sections:

Seven general chapters, which explore topical issues affecting shipping law from a cross-border perspective.

Country question and answer chapters. These provide a broad overview of common issues in shipping laws and regulations in 44 jurisdictions.

All chapters are written by leading shipping lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Andrew Bicknell of Clyde & Co LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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# Cyprus

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## A. KARITZIS & ASSOCIATES L.L.C

### 1 Marine Casualty

**1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:**

#### (i) Collision

Cyprus has adopted the International Convention for the Unification of Certain Rules of Law with Respect to Collision between Vessels and Protocol of Signature, Brussels 23 September 1910 (extended to Cyprus on 1 February 1913). Also, the Maritime Convention Act of 1911, derived from the Law of the United Kingdom applies to Cyprus (this was seen in (1990) 1 C.L.R. 850).

Moreover, the Convention on International Regulations for Preventing Collisions at Sea, 1972 and for Matters Connected Therewith Law of 1980 and its subsequent amendments apply both to all Cypriot ships and foreign ships within the territorial sea of Cyprus (this was seen in (1994) 1 C.L.R. 54 and in (1999) 1B C.L.R. 1079).

In addition, the International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision, 1952, Law of 1993 (Law 31(III)/93) and the International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or other Incidents of Navigation, 1952, Law of 1993 (Law 32(III)/93) have also been ratified in Cyprus.

#### (ii) Pollution

The following conventions, directives, agreements and domestic laws are applicable in Cyprus:

- The International Convention on Civil Liability for Oil Pollution Damage of 1969 and its Protocols of 1976 and 1992 (“CLC”) and Amendments of 2000.
- The International Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols and amendments (“Barcelona Convention”).
- The International Convention for the Prevention of Pollution from Ships of 1973 as modified by the Protocol of 1978 (“MARPOL 73/78”) and its amendments.
- The Protocol of 1992 Amending the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 and Matters Connected Therewith (Amendment) Law of 1997 (Law 15(III)/97).
- The International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters of 1972, as amended (“LDC 1972”).

- The International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001 (“BUNKERS”).
- The International Convention on the Control of Harmful Anti-fouling Systems on Ships of 2001 (“AFS”).
- The International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004.
- The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 1996 (HNS Convention) and for Matters Connected Therewith Law of 2004 (Law 21(III)/2004) (*Not yet in force*).
- The Environmental Liability Directive (“ELD”) 2004/35 (EC).
- The Waste Directive 75/442 (EC).
- Agreement on Merchant Shipping with the Government of the Arab Republic of Egypt signed on 26 November 2006. *The Memorandum of Understanding Between the Republic of Cyprus and the Arab Republic of Egypt on Co-operation in the Field of Environmental Protection signed on 26.11.2006.*
- The Agreement Between Cyprus, Israel and Egypt for Cooperation in Combating Major Marine Pollution Incidents in the Mediterranean Law of 2001 (Law 21(III)/ 2001).
- The Merchant Shipping (Ship Source Pollution) Law of 2008 (Law 45(I)/2008) and its subsequent amendments.
- The Environmental Liability with regard to the Prevention and Remedying of Environmental Damage Law 189(I)/2007.
- The Solid and Dangerous Waste Law of 2002 215 (I)/2002.

It would of course be beyond the scope of this question and unnecessary to discuss this in great detail. However, a brief overview regarding the importance, the mission and the role of the Department of Fisheries and Marine Research on the protection of the Marine Environment in Cyprus could prove to be useful.

It is worth mentioning that the Department of Fisheries and Marine Research (“DFMR”) which was founded in 1964 within the Ministry of Agriculture and Natural Resources of the Republic of Cyprus, it is among others responsible for the protection and preservation of the Marine Environment through an integrated scientific approach. The Marine Environment Division (“MED”) of the DFMR has as primary priority the maintenance of the Good Environmental Status (“GES”) of the Marine Environment of Cyprus for future generations.

Moreover, in July 2008, the Marine Strategy Framework Directive (2008/56/EC) (“MSFD”) entered into force, establishing a legal framework for the protection and management of European seas and ensures their long-term sustainable use. The main objective of the Directive is to achieve and/or maintain Good Environmental Status (“GES”) by 2020.



**(iii) Salvage / general average**

Cyprus has adopted the Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea and Protocol of Signature, Brussels, 23 September 1910 (extended to Cyprus on 1 February 1910).

Cyprus courts in almost all cases enforce the salvage contract (*The Fishing Trawler Black Tiger (2007) 1A CLR 303*) and in assessment of a salvage operation they apply the common law principles on salvage (*The Ship 'Yamama' and her Cargo and Freight (1985) 1 C.L.R.328*). For the time being, there is no mandatory local form of salvage agreement in Cyprus, and therefore the Lloyd's standard form is acceptable.

**(iv) Wreck removal**

The Nairobi International Convention on the Removal of Wrecks 2007, has been entered into force in Cyprus on 22 October 2015. In addition, the Wrecks Law Cap 298, regulates the wrecks in Cyprus.

Pursuant to section 8 of the Wrecks Law Cap 298, the Receiver is responsible for the removal of wrecks in the territory of Cyprus, unless otherwise in accordance to section 16, “*the owner, or if the wreck is insured, the underwriter or his agent, is present, the Receiver shall not interfere with the wreck, except he is requested to do so by the owner or underwriter*”.

**(v) Limitation of liability**

Cyprus has ratified the Convention on Limitation of Liability for Maritime Claims (“LLMC”) of 1976 and of its Protocol of 1996 Amending the Said Convention and for Matters Connected Therewith Law of 2005 (Law 20(III)/2005). The LLMC clearly states in articles 2 and 3 which claims are not subject to limitation of liability. The owner, charterer, manager, operator and a salvor of a seagoing ship is eligible to limit their liability. In addition, an insurer is subject to the limitation of liability for maritime claims.

Cyprus is also a member of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea of 2002, which sets out limits for death, personal injury, for loss and damage to luggage and vehicles. According to the Athens Convention, the contractual carrier is strictly liable under the two tiers of liability regimes. For the loss suffered as a result of death or personal injury there is, for the carrier, a *prima facie* limitation right 250,000 units (special drawing rights) per passenger. This liability can further reach up to 400,000 units (special drawing rights) per passenger, if a fault by the carrier is proved.

**(vi) The limitation fund**

The Protocol of 1992 Amending the International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 and Matters Connected Therewith (Amendment) Law of 1997 (Law 15(III)/97), which is ratified by Cyprus, sets out the maximum amount of compensation which is 300,740,000 special drawing rights.

In addition, the Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea, requires a minimum of 250,000 special drawing rights as a compulsory insurance for ships carrying more than 12 passengers.

**1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?**

When an accident occurs involving a ship flying the Cyprus flag anywhere in the world, or a ship flying a foreign flag within Cyprus's Territorial and Internal waters, the Master or the Owner / Manager or the Agent of the ship must notify the Marine Accidents Investigation Committee (“MAIC”). The MAIC was established

on 19 December 2013 by virtue of the Marine Accidents and Incidents Investigation Law of 2012 (Law 94 (I)/2012). The MAIC is not an enforcement or prosecuting body. The legislative framework under which the MAIC operates is provided in the aforesaid Law 94(I)/2012, which transposed the EU Directive 2009/18/EC into Cyprus' legislation.

More precisely, the MAIC is an independent Committee responsible for the investigation of all types of marine accidents (casualties and incidents) and it is assisted by the Marine Accidents and Incidents Investigation Service. Marine accident notifications should be addressed to the MAIC.

The objective of the MAIC in investigating an accident is to prevent future accidents by establishing their causes and circumstances. Its purpose is not to apportion blame or liability, nevertheless, it will not refrain from fully reporting on the causal factors of an accident, as blame or liability can be inferred from them.

**2 Cargo Claims****2.1 What are the international conventions and national laws relevant to marine cargo claims?**

The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading and Protocol of Signature, Brussels 25 August 1924 is applicable in Cyprus. Additionally, through the Carriage of Goods by Sea Law Cap 263, the Hague Rules are applicable in Cyprus. According to article 4 of the Cap 263, the Hague Rules are applicable to charterparties if they are expressly incorporated and if there is an express statement in the bill of lading (this was seen in *(1980) 1 CLR 386* and *(1966) 1 CLR 181*). Lastly, the English Bills of Lading Act of 1855 also applies in Cyprus.

**2.2 What are the key principles applicable to cargo claims brought against the carrier?**

The English Bills of Lading Act of 1855 applies in Cyprus by means of articles 19 and 29 of the Courts of Justice Law (Law 14/196), as it was held in *(2001) 1B CLR 1220* and it regulates the transfer of rights under contract of carriage.

**2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?**

In cases where the Hague Rules apply (e.g. if they are explicitly incorporated in the Bill of Lading), the shipper is under the obligation to properly declare cargo, which means that in case he fails to do so, he will *prima facie* be liable to the carrier for damage to the ship.

**3 Passenger Claims****3.1 What are the key provisions applicable to the resolution of maritime passenger claims?**

The Provisions of the Athens Convention Relating to the Carriage of Passengers and their luggage by Sea of 2002, along with the Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea are applicable in Cyprus for “seagoing” vessels.

For the sake of consistency and clarity, it is useful to determine the term “seagoing”. According to article 1 (3) of the Athens Convention for the Carriage of Passengers, a ship is a “seagoing vessel”. The English Admiralty Court in *The Sea Eagle* case, held that the meaning as to what a “seagoing” vessel is, depends on the particular voyage. In a nutshell, it depends on the facts of each case *per se*. Last but not least, the Admiralty Registrar highlighted that the key factor was not “whether a ship could go to sea, but whether she did go to sea”.

Furthermore, pursuant to Circular 10/2019 which deals with the Registration of Vessels in the Cyprus Register of Ships and as issued by the Shipping Deputy Ministry to the President on 23 May 2019, passenger ships are described as ships which are engaged in international voyages, including short international voyages.

In addition, the Coastal and other Passenger vessel Regulations of 2012 (P.I. 278/2012), apply to the coastal passenger and Small Passenger vessels. According to the Coastal and other Passenger vessel Regulations of 2012 (P.I. 278/2012), “coastal passenger vessel” or “vessel” means a marine craft or a high speed small vessel in accordance with article 2 of the High Speed Small Vessels Laws of 1992 to 2001, which performs routes for the transport of passengers to and from different parts of the coast of the Republic, sea tours, education and training, amateur fishing, diving, embarkation or disembarkation to another vessel or ship or other related activity along the coast of the Republic, and includes small passenger vessels.

## 4 Arrest and Security

### 4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

A party to an Admiralty action has a variety of available means and “weapons” to secure his/her claim against another party. Some examples of those, are an arrest of a ship, a freezing (so-called “*Mareva*”) injunction, an order for selling a Ship pending the Legal Action (so-called “*Pendente Lite*”), “*Norwich Pharmacal*” orders, a “*Chabra*” injunction and/or others, under article 32 of the Courts of Justice Law 1960 (Law 14/60), provided of course that the Applicant will meet certain prerequisites that will allow the Court to issue such an interim order.

Cyprus is not itself a party to the 1952 Arrest Convention, however, the English Administration of Justice Act 1956 which ratifies the 1952 Arrest Convention applies to Cyprus by virtue of its Constitution and by articles 19 and 29 of the Courts of Justice Law 1960 (Law 14/60) as seen in (1989) *ICLR* 473. Further, the Cyprus Admiralty jurisdiction Order 1893, regulates the procedure before the Court.

The significance of a maritime lien is that it enables the Court or its appointees to arrest and seize the vessel in satisfaction of the claims against her. Under Cyprus law, maritime liens enjoy advantages over all other permitted actions *in rem* (statutory liens), in the time of creation of the lien, in priority and in the enforceability of the security. In addition, statutory liens have no priority over mortgages as seen in (1989) *1 CLR* 420.

Cyprus courts follow the English case *The Bold Buccleugh* (1851), which recognises as maritime liens the salvage, bottomry, master and seamen’s wages, disbursements and liabilities and damage done by a vessel.

The arrest of a ship is only possible in the case of an action *in rem*. Thus, the filing of an action *in rem* is a prerequisite for such an arrest. The arrest proceedings are regulated by Rules 50–59 of the Cyprus Admiralty jurisdiction Order 1893. The Court has a wide

discretion to order the arrest of the vessel if it is satisfied that the plaintiff is eligible to the arrest.

Similarly, the arrest of a sister ship is applicable in Cyprus by means of Section 3(4) of the English Administration of Justice Act 1956, which applies in Cyprus as per articles 19 and 29 of the Courts of Justice law 1960 (14/1960).

### 4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

Yes, it is possible. In the admiralty case No. 32/2014 between (1) *Interbunker Management Ltd*, and (2) *Novoil Ltd v. m/v “BARIS”*, our law firm (A. KARITZIS & ASSOCIATES L.L.C) successfully represented the plaintiffs in issuing an arrest warrant against the defendant’s vessel which was anchored in the port of Larnaca, Cyprus. The claim of the plaintiffs related to the supply of bunkers to the defendant’s vessel, and the arrest warrant was issued upon filing an *ex parte* application at the Supreme Court of Cyprus.

### 4.3 Is it possible to arrest a vessel for claims arising from contracts for the sale and purchase of a ship?

It is not possible to arrest a vessel for contracts relating to the sale and purchase of a ship, unless the circumstances of a case give rise to a claim to the possession or ownership of a ship or to the ownership of a share therein (under clause 1(1)(a) of the Administration of Justice Act 1956 which applies in Cyprus under the Courts of Justice Law 1960 (Law 14/1960)). Also, while section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws of 1963 to 2005 (Law 45/1963 as amended) provide for the right of an “interested person”, to apply to the Supreme Court, in its Admiralty Jurisdiction, for the issuance of the order prohibiting any dealing with a ship or any share therein if it thinks fit under the given circumstances, the caselaw of the Supreme Court has ruled out the buyer of a ship from the definition of the “interested person”.

### 4.4 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

In relation to the claimants who possess the prerogatives of a maritime or statutory lien, they have the option to motion a maritime claim to the Admiralty Court and seek the issuance of a warrant for the arrest of the vessel in question, including the cargo being on board the vessel. The security vested by section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws of 1963 to 2005 (Law 45/1963 as amended) (referred to in question 4.3 above) might also be considered very useful but only in those cases where the applicant is deemed to be an “interested person”. A “*Mareva*” injunction, which is distinguished from a warrant of arrest against the vessel, is also an option which has been recognised by Cypriot caselaw. It is needless to stress that other security options of commercial nature are available, such as bank guarantees or P&I letters of undertaking, which, nonetheless, require the accord of the other party.

### 4.5 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

When a warrant for the arrest of a vessel is issued, the Court orders that the vessel may be released only on the provision of adequate

security, of which the Court will specify. The security normally takes the form of a bank guarantee or cash. A corporate guarantee used to be a form of security especially for small claims and where the ship-owning company was a local and financially robust corporation, this practice seems to have been abolished in the last few years and a bank guarantee is ordered by the Registrar of the Admiralty Court. The P&I letter of undertaking might be a form of acceptable security to the litigants but not to the Registrar of the Admiralty Court.

## 5 Evidence

### 5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

The Cyprus courts by means of article 32 of the Courts of Justice Law 1960 (Law 14/60) are authorised to grant injunctions, in all cases which appear to the Courts to be just and convenient to do so. The “*Anton Piller*” orders which enable the plaintiff to secure the preservation of relevant evidence which may be otherwise destroyed by the defendant along with the “*Norwich Pharmacal*” orders, which are related to the disclosure of information, can be issued by the Cypriot Court, as the discovery orders.

Furthermore, there is the option of article 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws of 1963 to 2005 (Law 45/1963 as amended) which is referred to in question 4.3 above and which was seen in (1987) 1 CLR 11 and in (1989) 1E CLR 10.

### 5.2 What are the general disclosure obligations in court proceedings?

The disclosure of documents in an admiralty action is governed by sections 93 and 98 of the Cyprus Admiralty Jurisdiction Order of 1893 (“the Order”), which constitutes the authoritative regulatory framework governing the admiralty procedure before the Supreme Court in its Admiralty Jurisdiction. In particular, section 93 of the Order provides that “*the Court or Judge may, on the application of any party to an action and without notice to any other party, order that any other party shall make discovery, by affidavit, of all documents which are in the possession or power relating to any matter in question therein*”. A similar *ex officio* power is vested to the Court or Judge without the motion of any party.

## 6 Procedure

### 6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

Following Cyprus’ independence and as contemplated by the Constitution, which was effected on 16 August 1960, the Courts of Justice Law of 1960 (Law 14/1960) provided under articles 19 (a) and 29 (2) (a) that the admiralty jurisdiction shall be exercised by

the Supreme Court “*as a Court of Admiralty vested with and exercising the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its Admiralty jurisdiction on the day immediately preceding Independence Day*”.

The Supreme Court has original and Appellate jurisdiction, which can be invoked both by actions *in rem* and actions *in personam*, according to the Cyprus Admiralty Jurisdiction Order 1893, Rule 3. However, the District Courts according to article 22B of the Courts of Justice Law of 1960 (Law 14/1960), along with its annex, have limited jurisdiction on maritime claims, but only on referral by the Supreme Court. The Supreme Court has a wide discretion to refer an Admiralty Action to a District Court, under certain conditions (i.e. the claim itself must not exceed €100,000).

The Cyprus Admiralty Jurisdiction Order 1893 confers to the Supreme Court jurisdiction to hear and determine claims that relate, amongst others, to damages done by or received by a ship, disputes as to loss of life or personal injury, any claims that are concerned with the construction/repair or equipment of a ship, any disputes that arise in respect of goods or materials supplied to a ship for her operation or maintenance, any claim by a master, shipper, or agent in respect of disbursement made on account of a ship and any collision and salvage claims.

All admiralty actions before the court start with the issuance of a writ of summons, which identifies the parties and declares the nature of the claim. In an action *in rem*, the writ of summons must be served at least 21 days before the date which the parties appear before the court. Conversely, in an action *in personam*, the writ must be served 10 days before.

Arbitration is rarely used in Cyprus to resolve maritime or shipping claims, while mediation is not applicable.

### 6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

Given the unique characteristics of the island, Cyprus will always have a prominent place in global maritime issues. It is well worth mentioning that Cyprus has the 10<sup>th</sup> largest merchant fleet in the world, and the 3<sup>rd</sup> largest in Europe. More precisely, Cyprus registry comprises more than 1,600 ocean-going vessels of total gross tonnage exceeding 23 million. It is also one of the only two open registries within the European Union, allowing non-Cypriot citizens to register their ships under the Cyprus flag, provided that they fulfil the specific conditions of ownership that the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law of 1963, requires.

Cyprus attracts many leading ship-owners to register their vessels under its flag for the following reasons:

- Member of the European Union and the Eurozone.
- European Union diplomatic protection.
- Lying in the Eastern Mediterranean, at the crossroads of Europe, Asia and Africa with easy access to markets and close to the Suez Canal.
- No. 1 Ship management in Europe and one of the top 5 in the world.
- Over 200 shipping-related companies based in Cyprus.
- Cyprus flag classified in the white list of PARIS & TOKYO MOUs on Port State Control.
- Cyprus flag excluded from the “List of Target Flag States” of the US Coast Guard, resulting in fewer inspections and delays of Cypriot ships at the ports of both MoUs and the US.



- Comprehensive, transparent and favourable Tonnage Tax System approved by the European Commission, providing exemptions to the beneficiaries (Owners of Cyprus ships, owners of foreign ships, charters and ship managers) from income tax.
- No income tax on the earnings of officers and crew members and master of a qualifying Cyprus ship.
- No tax on the income or profit made from the sale of a qualifying ship.
- More than 27 bilateral agreements on Merchant Shipping.
- Signatory to all International Maritime Conventions.
- National legislation according to the *Acquis Communautaire*.
- Double tax avoidance treaties with more than 60 countries.
- An EU-approved “Open Registry”.
- Full protection for financiers and mortgagees.
- No stamp duty on ship mortgage deeds or other security documents.
- Competitive ship registration costs and fees.
- Low set up and operating costs for companies.
- Excellent telecommunications and easy access by air and sea.
- No nationality restrictions for seafarers.
- Democratic and safe country with a free market economy.
- No exchange control and freedom of movement of foreign currency.
- Overseas Maritime offices at Piraeus, Brussels, Rotterdam, Hamburg, London and New York City, offering services to seafarers and Cyprus ships.
- Highly qualified managerial, clerical and technical staff available by the Shipping Deputy Ministry to the President.
- Excellent regulatory infrastructure.

## 7 Foreign Judgments and Awards

### 7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

A foreign judgment can be recognised and enforced in Cyprus through a plethora of procedural Laws and Conventions, depending predominantly on the nationality of the foreign courts and states.

- **EU Judgments**
  - EU Regulations No. 44/2001 and No. 1215/2012 [Brussels I Regulation (recast)].
  - EU Regulation No. 805/2004.
  - EU Regulation No. 861/2007 (European Small Claims Procedure).

Following the accession of The Republic of Cyprus to the European Union in 2004, the judgments from the courts of EU Member States (also including Switzerland, Norway and Iceland), can be recognised and enforced in Cyprus, without any declaration of enforceability being required.

The aforementioned EU Regulations that apply to all judgments deal with civil and commercial matters whatever the nature of the court or tribunal of the EU Member State (the EU Reg. 1215/2012 applies to Denmark, contrary to the EU Reg. 805/2004 and EU Regulation No. 861/2007, which do not apply to it). The EU Regulations do not extend to revenue, customs or administrative matters.

The European Court of Justice (ECJ) in the *Rüffer* Case and in a significant number of other cases (such as *C-292/05* and *C-433/01*) determined what a Civil and Commercial matter is. According to the ECJ, it is the legal character of the claim that matters, not who the claimant is. In other words, the crucial question is whether the particular right is based on something which is commonly available to everybody or whether it is something which is exclusively available to the state authority.

- **Non-EU Judgments**

The overseas judgments are recognised and enforced in Cyprus through the Foreign Courts Judgments (Recognition, Registration and Enforcement) Law (121(I)/2000), which regulates the issue of pursuing recognition and enforcement of foreign judgments based on bilateral or multilateral treaties and conventions between Cyprus and third (non-EU) countries (such as the Hague Convention on Foreign Judgments in Civil and Commercial Matters and the Convention on the Recovery Abroad of Maintenance).

- **Commonwealth Judgments**

The judgments derived from the courts of Commonwealth countries are recognised and enforced in Cyprus by means of the Foreign Judgments (Reciprocal Enforcement) Law of 1935, Cap 10, as amended by the Reciprocal Execution of certain Judgments of the Commonwealth Countries Law, 130(I) of 2000 (based on the English Foreign Judgments (Reciprocal Enforcement) Act 1933), which applies to creditors who obtained judgments of superior courts in the United Kingdom.

- **Common Law**

The enforcement of foreign judgments in Cyprus can be affected also by a common law action. The Common law rules apply to the recognition of judgments in civil and commercial matters which originate from jurisdictions outside the EU that have not concluded relevant treaties with Cyprus.

It is worth mentioning that until the Cyprus court recognises the foreign judgment, the judgment creditor might apply for interim relief. However, the Cyprus Courts have rarely declined or refused the recognition of foreign judgments and this is because of the following reasons:

- The judgment was contrary to the public policy of Cyprus (this was seen in the decision of the District Court of Lamaca dated 19 September 2017 in *Application No. 3/2016*).
- The proceedings were opposed to the principles of natural justice (e.g. the judgment was given in default of appearance, if the defendant was not served with the document which instituted proceedings in sufficient time, and in such a way, as to enable him to arrange for his/her defence).
- The foreign judgment among the same parties was inconsistent with a previous judgment of the Cyprus Courts.
- The judgment among the same parties clashed with previous judgment which was given elsewhere and for the same cause of action.

### 7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

The Arbitration proceedings are regulated in Cyprus by the Arbitration Law, Cap 4, which relates to domestic arbitrations and the Law on the International Commercial Arbitration of 1987, (Law 101/1987), which deals with the international commercial arbitrations (*Iguasu Enterprises Ltd & Another v. Voice International Ltd & Another*).



The Arbitration awards are enforceable in Cyprus on the basis of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the “New York Convention”) which transported into national law of Cyprus through Law 84/1979. Thus, arbitration awards made in other contracting states are enforceable in Cyprus. Cyprus is also a member of the Washington Convention of 1965, a regional Convention concerning the recognition and enforcement of an arbitral award.

The Cypriot Courts are willing and able to issue an interim relief in aid of arbitration proceedings and often exercise this power in practice.

However, the Cyprus Courts can refuse the recognition or enforcement of arbitral awards on the following grounds:

- lack of jurisdiction of the tribunal (this was seen in *The Ship Athena case* and in the Applications 1339/09, 20/12 and 152/2014);
- the award is contrary to the public policy of Cyprus (*Republic of Kenya v. Bank für Arbeit and Wirtschaft AG (1999) 1(A) C.L.R. 585*);
- incapacity of the parties;
- invalidity of the arbitration agreement;
- the subject matter of the dispute is not covered by arbitration under the Cyprus law; and
- lack of proper notice of the arbitral proceedings to the party, or denial of a party’s right to present his case.

## 8 Updates and Developments

### 8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

#### ■ Establishment of Shipping Deputy Ministry to the President

On 1 March 2018, the Department of Merchant Shipping (“DMS”) was upgraded to a Deputy Ministry of Shipping by the Establishment of a Shipping Deputy Ministry and Appointment of a Shipping Deputy Minister to the President and for Matters Connected Therewith Law of 2017 (Law No. 123(I)/2017), which entered into force on 1 March 2018.

Prior to this establishment, the DMS was a distinct entity in the Ministry of Transport, Communications and Works of the Republic of Cyprus, since 1977, and it was responsible for all maritime/shipping matters.

From 1 March 2018, the Shipping Deputy Ministry to the President commenced its operation, as an autonomous Deputy Ministry, dedicated entirely to the Cyprus Maritime Industry. This clearly reflects the importance of the shipping sector in Cyprus and the significance that the government places on its development, since the yearly contribution of merchant shipping to the Cyprus economy, is extremely high, with recent figures indicating that shipping accounts for approximately 7% of the country’s GDP.

More specifically, shipping stands as one of the strongest and most significant pillars of the Cypriot economy, and it has been characterised as a ‘blue economy’ with the sector contributing around 1 billion euros to the island’s GDP *per annum*.

#### ■ New Government Policy on the Registration of Vessels in the Cyprus Register of Ships

On 23 May 2019, the Shipping Deputy Ministry to the President issued the Circular 10/2019, which supersedes and replaces the existing circular 10/2012, which was in force since 15 October 2011 and dealt with the registration of vessels under the Cyprus flag. The replacement of the policy on the registration of vessels in the Register of Cyprus occurred in an effort to clarify certain discrepancies in the existing policy and also to the further development of the competitiveness of the Cyprus flag.

It is of great importance to mention that the Cyprus Registry is continuously upgrading its services, in order to offer a high standard of support to its flag users and maintain its reputation as a ‘Flag of Progress and Quality’.

#### ■ Yacht Leasing Scheme

The Cyprus Tax Department on 22 March 2019 released the unified Interpretative Circular 4 (VAT and Income Tax), referring to the registration, in the VAT Registry, of Cypriot companies which operate in the business sector of leasing pleasure yachts (recreational boats) in Cyprus. The provisions of the said circular along with the regime of pleasure yachts in Cyprus are explained analytically and can be found on our firm’s website ([www.karitzis.com](http://www.karitzis.com)).

#### ■ Use of Electronic Certificates

The Shipping Deputy Ministry to the President has recently issued a circular (Circular No. 14/2018) informing all registered owners, registered bareboat charterers, managers and representatives of ships flying the Cyprus flag, along with all Recognised Organisations and Recognised Security Organisations, that from now on it is acceptable for statutory certificates issued to Cyprus-flagged vessels by Recognised Organisations to be in electronic form. Provided that this is on the condition that they satisfy the requirements set out in the International Maritime Organization’s circular FAL.5/Circ.39/Rev.2, regarding the Guidelines for the use of electronic certificates. However, the existing practice of issuance of hard copy certificates remains acceptable.

#### ■ Establishment of Admiralty and Commercial Court

It is of great importance to be mentioned that on 6 May 2019, the Minister’s Cabinet has announced the approval of a draft bill providing for the establishment of Admiralty and Commercial Courts of Cyprus.

This new bill aims to constitute the fundamental basis of reforming the Judicial system of Cyprus by providing fast and effective remedies for Commercial and Admiralty disputes.

Particularly, the new bill provides that the Commercial Court will adjudicate specific commercial affairs disputes, namely those where the value of the claim exceeds two million euros, and these cases shall be subject to adjudication via fast track procedures.

On the other hand, the Admiralty Court will adjudicate shipping and maritime matters which will also be subject to the fast track procedure regardless of the value of the claim. The ultimate aim of this establishment is to strengthen the island’s shipping industry and simultaneously help to attract more investors.

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Antonis is the founder of A. KARITZIS & ASSOCIATES L.L.C. He is an Advocate, Legal Consultant, a member of the Limassol Bar Association and the Managing Partner of the Firm.

Antonis received his law degree from the University of Manchester in 2002. His knowledge and experience extends to various fields including amongst others, Shipping, Corporate, Commercial, Trusts, Tax, Property, Litigation, Admiralty and Administrative Actions.

He has successfully handled some of the Firm's most high-profile cases, including multi-million dollar claims. Antonis is currently studying with the Chartered Institute of Taxation, a programme which enhances his knowledge on tax issues. He has also completed all the Core Courses of the demanding and intensive MBA programme with the Cyprus International Institute of Management ("CIIM") and this has equipped him with the requisite knowledge and skills to lead and manage the Law Firm in a well-organised and diligent manner.

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Zacharias is an Advocate – Legal Consultant. He obtained his Bachelor degree ("Ptychion") in Law from the National and Kapodistrian University of Athens in 2014 and pursued his Master's degree in Maritime Law at the University of Southampton in 2018. His Master's degree focused on the Law of the Marine Environment, Admiralty Law, Marine Insurance Law, Carriage of Goods by Sea (Charterparties & Bill of Lading) and Unmanned Ships.

Zacharias successfully completed his legal training in November 2015 and he was admitted to the Cyprus Bar Association in 2018. He is a member of the Larnaca Bar Association and a member of the Navigation Committee of the Cyprus Bar Association. He is also an affiliate member of both Cyprus and Hellenic Marine Environment Protection Association (CYMEPA & HELMEPA).

Zacharias joined A. KARITZIS & ASSOCIATES L.L.C in January 2019 and has since been working in the Shipping Department.

**A. KARITZIS & ASSOCIATES L.L.C**

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